

OTAY RANCH PRESERVE JOINT POWERS AGREEMENT DISPUTE RESOLUTION PROCESS

Preserve Owner Manager Staff Recommendation

November 20, 2008

Approved by the POM Policy Committee on 011/20/08.

The Dispute Resolution Process was approved and is to be implemented as a POM Policy.

Motion to approve by County of San Diego/CHAIRMAN GREG COX.

Motion seconded by City of Chula Vista/DEPUTY MAYOR RINDONE.

Motion Carried 2/0.

BACKGROUND:

The concept to utilize a non-binding neutral third party in the dispute resolution process was presented to the Policy Committee at their last meeting held July 17, 2008. The Policy Committee supported this concept and directed staff to draft a dispute resolution process. At the October 29, 2008 Preserve Management Team (PMT) meeting, the PMT recommended approval of the dispute resolution process as outlined below. The PMT did not take action on a preferred implementation method.

The proposed dispute resolution process may be formalized by amending the Otay Ranch Preserve Joint Powers Agreement (JPA). Amending the JPA requires action by the County Board of Supervisors and the City of Chula Vista City Council. Alternatively, the dispute resolution process may be approved by the Policy Committee and may be implemented as a POM policy.

POM Policy Decision Making System:

The "Joint Powers Agreement Between the City of Chula Vista and the County of San Diego for the Planning Operation and Maintenance of the Otay Ranch Open Space Preserve" (the "JPA") requires a quorum of both elected representatives of the POM Policy Committee for purposes of conducting business. There is currently no process in place to resolve issues on which the Policy Committee is unable to reach consensus. Section 5. of the JPA authorizes the Policy Committee to establish policies for the PMT. Accordingly, City staff recommends that the Policy Committee adopt a dispute resolution policy to allow the POM Staff to utilize a neutral third party for non-binding mediation, in the event the Policy Committee is unable to reach consensus on an issue related to the POM. The proposed process is outlined below.

Proposed Dispute Resolution Process:

- If a dispute arises out of or related to the POM that cannot be resolved by POM Staff and the PMT, the PMT on consensus may direct POM Staff to participate in non-binding mediation with a neutral third party mediator in order to resolve the dispute. In doing so, the PMT must also come to consensus on the maximum amount that may be spent on the mediation.
- If the PMT cannot not reach consensus to utilize mediation, the PMT will present the dispute to the Policy Committee for their consideration and direction. If the Policy Committee directs POM Staff to participate in mediation, the Policy Committee must also set the maximum amount that may be spent on the mediation.

- Each agency shall be responsible for determining the source of funds for its share of the mediation costs.
- The mediation shall be conducted by the National Conflict Resolution Center (“NCRC”), or a similar neutral mediation service within the County of San Diego. Once a mediator is identified, POM Staff shall confirm that the mediator will prepare a written decision in the matter.
- The POM Staff shall agree on who shall conduct the mediation; if they are unable to agree, they shall defer to NCRC, or other selected mediation service, to choose the best-suited mediator to conduct the mediation.
- The POM Staff shall attend the mediation and shall be entitled to make written and/or oral presentations of their respective agencies’ positions to the mediator.
- The POM Staff shall agree on the date and time for the mediation.
- At the conclusion of the mediation, POM Staff shall obtain the mediator’s written recommendation regarding resolution of the disputed matter. The written recommendation shall be provided to the POM Staff. All mediation results and documentation, by themselves, shall be non-binding unless otherwise agreed upon, in writing, by both parties.
- After receiving the mediator’s written recommendation, the POM Staff shall forward the recommendation to the referring body (PMT or Policy Committee). If the matter was referred by the PMT, the PMT shall consider the mediator’s recommendation at their next scheduled meeting. The PMT may adopt the mediator’s recommended resolution, in whole or in part, reject it, take no action on it, or take any other action it deems appropriate, and shall provide direction to POM Staff accordingly. If the PMT does not agree to adopt the mediator’s recommended resolution, the matter shall be agendaized for the consideration by the Policy Committee.
- Upon referral of the matter to the Policy Committee, the Policy Committee may adopt the mediator’s recommended resolution in whole or in part, reject it, take no action on it, or take any other action it deems appropriate, and shall provide direction to POM Staff accordingly. If the mediation fails to resolve the dispute and consensus cannot be reached, the Policy Committee shall refer the matter back to the PMT for recommendation on an alternative course of action which may include any of the following:
 - Participate in additional mediation sessions;
 - Maintain the status quo;
 - Refer the matter to the Otay Ranch Sub-Committee as established by County Board of Supervisors Policy I-109 (Attachment A);
 - Refer the matter to the legislative bodies of the City and the County for direction;
 - Take other action as permitted by the JPA; or
 - Any other legally permissible action which the Policy Committee may deem appropriate.

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Purpose

To provide direction to San Diego County decision-makers and staff, owners of the subject land, and other public agencies concerned with development of the Otay Ranch project, for purposes of implementing Volume 2 of the Otay Subregional Plan.

Background

On October 28, 1993, the Board of Supervisors adopted the Otay Ranch General Plan Amendment, GPA 92-04. This GPA adopted Volume 2 of the Otay Subregional Plan text, which contains major policies, recommendations and implementation measures guiding the development of the Otay Ranch project. Many of these policies, recommendations and implementation measures require continued coordination between the City of Chula Vista and the County of San Diego.

Through the process of preparation, consideration and adoption of said GPA, the Otay Ranch Associated Documents listed below were developed and accompanied the GPA documents. These Associated Documents contain matters which it was not appropriate to place in the GPA text, but which complement the GPA text and are necessary to ensure the orderly development and implementation of the Otay Ranch project in accordance with the Otay Subregional Plan.

Policy I

It is the policy of the Board of Supervisors to establish a subcommittee composed of two members of the Board that would convene on an as-needed basis with a two-member subcommittee of the Chula Vista City Council to provide input and direction to the Board and City Council, staff and the applicant on the following issues/plans: Sphere of Influence Study, Annexation Plans, Property Tax Agreements, Phase II RMP, Overall Design Plan, and other major issues identified by either body.

Policy II

It is the policy of the Board of Supervisors that Otay Ranch Associated Documents listed below, all on file with the Clerk of the Board of Supervisors and identified by the Document Numbers indicated below, shall be used in the preparation of plans, reports and other documents for the Otay Ranch project; County decision-makers and staff shall assure that applications submitted for the development of portions of the Otay Ranch project are consistent with these Associated Documents:

- Mitigation Monitoring Program (Doc. No. 759220)

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- Resource Management Plan(Doc. No. 759221)
- Village Phasing Plan(Doc. No. 759222)
- Facility Implementation Plans(Doc. No. 759223)
- Service/Revenue Plan(Doc. No. 759224)

Amendments:

The above Otay Ranch Associated Documents may be amended by the Board of Supervisors from time to time. The following procedures shall be followed when the processing of any such amendment is authorized by the Board of Supervisors:

- 1.The Department of Planning and Land Use shall be responsible for preparation and processing of such an amendment. The amendment shall be prepared in consultation with the City of Chula Vista. The Department shall prepare a report which analyzes the impacts of the proposed amendment and the comments received from the City of Chula Vista.
- 2.The Planning Commission shall hold a public hearing on the proposed amendment, and after considering recommendations of staff, the City of Chula Vista and any interested persons shall make a recommendation to the Board of Supervisors.
- 3.Upon receipt of the Planning Commission's recommendation, the Board of Supervisors shall also hold a public hearing on the proposed amendment, and may approve, modify or disapprove the proposed amendment.
- 4.Notice of the hearings by the Planning Commission and the Board of Supervisors shall be given by publication of the subject, time and date thereof in a newspaper of general circulation within the County, as least 10 days prior to the hearing.
- 5.An applicant for a privately initiated amendment to any of the Otay Ranch Associated Documents shall pay a fee in accordance with Paragraph D of Schedule F of Section 362 of the San Diego County Administrative Code, to cover all costs of the County associated with processing such application. The Director of Planning and Land Use may require that a deposit of estimated costs be made in advance of work being commenced on such an application.

Sunset Date

This Policy will be reviewed for continuance by December 31, 2013.

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Board Action

10-28-93 (1)

6-22-05 (21)

11-15-06 (19)

CAO Reference

1.Department of Planning and Land Use

2.Department of Public Works